

December 31, 2018

Via U.S. Mail and Electronic Mail

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Re: Crooked Creek Community Association, Inc.

Dear Wake County Commissioners:

This Firm represents the interest of the Crooked Creek Community Association ("Association"). I have represented the Association for over 15 years. For over three years, the Board for the Association has been involved in the after effects of, and re-purposing related to, the closing of the Crooked Creek Golf Course, now designated park property which sits squarely in the middle of the community. It is our understanding that Commissioner Greg Ford has put together a proposal for the County Commissioners to vote on at their monthly meeting which would result in the sale of the proposed park property now owned by the County as surplus property. I write in regard to that proposal and the ramifications of that proposal as this piece of property represents a unique opportunity for the residents of Wake County, not just Crooked Creek

owners. If Commissioner Ford's proposal were to be adopted by the County Commissioners, it would likely lead to widespread litigation over the title of the park property. In addition to an extreme waste of County resources, such a proposal is wholly inconsistent with the Parks, Greenways, Recreation and Open Space Bond approved by the voters this fall.

As the majority of the County staff and County Commissioners know, many representations were made to County residents, the Conservation Fund, and Crooked Creek residents prior to the County's acquisition of the property. The subject property was conveyed to the County from The Conservation Fund on September 19, 2018, in that Special Warranty Deed recorded at book 17245, page 543 of the Wake County Register of Deeds. Prior to this, the property had been owned by the original developer of Crooked Creek (C.C. Partners, Inc.) who conveyed the property to The Conservation Fund on February 28, 2018, in that Special Warranty Deed recorded at book 17056, page 2257 of the Wake County Register of Deeds. The Conservation Fund's involvement in this transaction was to see that the property was preserved as open space or park property. These conveyances were prudently coordinated and orchestrated in 2018 based on representations made in open County Commission Meetings and private meetings with the residents of Crooked Creek. Only after careful collaboration between Crooked Creek property owners, C.C. Partners, Inc., and The Conservation Fund, was the property conveyed to the County for park purposes. The acquisition of this property could not have been obtained by the County without the promises and representations of County staff and County Commissioners that the property would ultimately become a County park. In short, the recent acquisition of the land by the County was the result of thousands of hours of work by County officials, representatives of the Association, The Conservation Fund, County staff, developers, and tens of thousands of dollars in taxpayer money all being directed to the concerted effort at the development of the property into park property.

The County would not have acquired title to this property without numerous representations about the future use of the property to the Crooked Creek Owners. As you may recall, the property initially was subjected to the Declaration of Covenants, Conditions, and Restrictions for the Crooked Creek Subdivision in Deed Book 5729, Page 808, Wake County Registry ("the Declaration"). The Declaration provided that if the property were later subdivided, Lots would be assessable to the Association and any homes built on such Lots would be subject to architectural control by the Association. Additionally, the Declaration also contained a few restrictions for the golf course even if not subdivided. For this reason, the County wanted the Declaration removed from the golf course. As part of the County's acquisition process and as one of 11 County requirements prior to acquisition of the property, the County demanded that the Declaration had to be formally amended to "remove" the Declaration from the golf course. Owners pushed back because this was not an easy feat -- in order to "remove" the Declaration from the golf course, the Declaration would have to be amended by 90% of the Owners in Crooked Creek. Consequently, numerous County officials, staff, and officials personally attended and talked with property owners in Crooked Creek. County staff and officials informed, represented and assured residents that they wanted to use the property as a park.

It took quite an effort by the County's staff, officials and Commissioners to convince the Owners to trust the County that this land would be used for a park and that amending the Declaration was in their best interest. At a meeting on December 7, 2017, immediately prior to

the formal vote to amend the Declaration, Frank Cope from Wake County met with Owners and explained that the land would be used as a park. Matt Calabria was also present at this meeting voicing support for the park and addressing Owner's concern. Based on these promises, representations, and assurances, 12 days later the Owners voted on December 19, 2017, to amend the Declaration in order to effectuate the conveyance of the land from C.C. Partners, Inc. to The Conservation Fund to the County for the ultimate re-purposing of the land for a park. On January 2, 2018, the Amendment to Declaration was recorded at book 17013, page 991 of the Wake County Register of Deeds ("the Amendment"). The Amendment provided, in part that if the former golf course was "not conveyed to the Fund or to Wake County, then its Withdrawal Amendment shall be deemed null and void." During this time period, a number of various people bought homes in Crooked Creek based on the future use of the former property as a park.

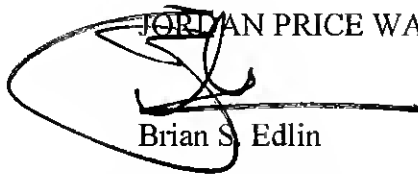
Thereafter, the land was conveyed from C.C. Partners, Inc. to The Conservation Fund; then, from The Conservation Fund to Wake County. On June 18, 2018, the County Commissioners voted to transfer \$4,000,000 for the purchase of the former Crooked Creek golf course and authorized staff to develop a master plan for the property. On September 19, 2018, the County acquired title to the former golf course. Presumably, C.C. Partners, Inc. is or will be applying for a tax credit for the transaction since the land was intended to be preserved and not developed. On November 6, 2018, voters approved a \$120 million bond referendum for "Parks, Greenways, Recreation and Open Space". Now, just over three months later, one County Commissioner has put forth an unfortunate proposal for the Commissioner's consideration at their meeting on January 7, 2019, to undo two (2) years of work and sell the park property as "surplus property." To make this abrupt "bait and switch" easier to swallow, Commissioner Ford has suggested it would "give the owners their covenants back"; however, legally he does not explain how this is necessary or possible with or without the involvement of the significant number of Owners that were duped into voting for the Amendment in first place.

The above proposal, if adopted, would invariably lead to major uncertainty over the land, may have potential tax ramifications for the parties involved, and, in all likelihood, lead to litigation involving the County, The Conservation Fund, the Association regarding the Declaration and the representations made by the County to encourage the Owners to vote "for" amending the Declaration. This land represents a unique opportunity for the County to build a park with synergies with the Wake County Board of Education and regional greenway connections. It is entirely consistent with what 68% of the citizens of the County approved in the Parks, Greenways, Recreation and Open Space bond referendum. More importantly, the park is what the County represented, promised and assured the Owners of Crooked Creek when they voted in December of 2017 to amend their Declaration at the insistence of the County. Voting to sell the property less than four months later for development amounts to a "bait and switch" which is inconsistent with representations of the County, the preference of the voters in the bond referendum, the intent of the parties when the land was sold from C.C. Partners, Inc. to The Conservation Fund, the June 18, 2018 vote of the County Commissioners, and the money already expended on the park project by the County. If the proposal is adopted, I suspect it will lead to litigation and a *lis pendens* tying up the property and clouding its title for years.

Far more than just the property owners in Crooked Creek are watching the outcome of this closely, as to whether the County can make such representations to its residents in order to remove

covenants from property and just a few months later disregard its comments, assertions, representations and promises and develop the property in an entirely different and unrelated manner than it previously represented. We are hopeful the County will not treat its residents so callously and instead stand by its stated purpose for the land and confirm that County residents can trust what county staff and its commissioners stated intentions. There are thousands of southern Wake County residents who have a vested stake in this park project, which has now gained the attention of the media as well as state and local officials. Based on the foregoing, we believe the proposal to convey the former property is shortsighted and should be pulled from the agenda.

Sincerely,


BRIAN PRICE WALL GRAY JONES & CARLTON
Brian S. Edlin

cc: Ron Nawojczyk, for the Board of Directors
Ken Boone, for the Board of Directors
Allison Cooper, Wake County
Scott Warren, Wake County
Frank Cope, Wake County
David Proper, Urban Program Director for The Conservation Fund
Russell Killen, C.C. Partners
Denise Hogan, Clerk to the Board